

RESOLUTION NO. 2015-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA, COUNTY OF MONTEREY, STATE OF CALIFORNIA, INTENTION TO APPROVE THE AMENDED JOINT POWERS AGREEMENT, MONTEREY BAY AREA SELF INSURANCE AUTHORITY

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified on Government Code Section 990.4; and

WHEREAS, the City of Marina is currently a member of a Joint Powers Agreement through Monterey Bay Area Self Insurance Authority (MBASIA); and

WHEREAS, MBASIA is restructuring its governing documents; and

WHEREAS, for the purpose of continuing liability and workers compensation insurance coverage in MBASIA's insurance pool, and as a result of this amendment to the governing documents, the City of Marina will execute the amended Joint Powers Agreement.

NOWM THEREFORE IT BE RESOLVED by the City Council of the City of Marina that:

SECTION 1. The City Council does hereby give notice of intention to approve the Joint Powers Agreement, as amended February 2, 2015, approving MBASIA's amended Joint Powers Agreement, the terms and conditions contained therein, a copy of said agreement being attached hereto as "Exhibit A" and by this reference made a part hereof; and

SECTION 2. The City Manager may execute said Joint Powers Agreement on behalf of the City of Marina; and

SECTION 3. This Resolution is effective upon its adoption

PASSED AND ADOPTED BY the City Council of the City of Marina at a regular meeting duly held on the 17th day of March 2015 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None.

ABSENT, COUNCIL MEMBERS:None.

ABSTAIN, COUNCIL MEMBERS:None.

ATTEST:

HcpnlQEppgm Mayor Rtq"Vgo

Anita Flanagan, Deputy City Clerk

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 17, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,
APPROVING THE AMENDED JOINT POWERS AGREEMENT,
MONTEREY BAY AREA SELF INSURANCE AUTHORITY;
AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDED
JOINT POWERS AGREEMENT ON BEHALF OF THE CITY SUBJECT
TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.**

REQUEST: City Council consider:

1. Adopting Resolution No. 2015-, approving the Amended Joint Powers Agreement with Monterey Bay Area Self Insurance Authority; and
2. Authorize the City Manager to execute the amended Joint Powers Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

The City of Marina is a member of the Monterey Bay Area Self Insurance Authority (MBASIA), which is a Joint Powers Insurance Authority that provides insurance coverage to the City of Marina for Liability and Workers Compensation.

MBASIA recently conducted a Long Range Planning meeting in which the Board of Directors took action to create an Ad Hoc Committee to review the Joint Powers Agreement.

The Ad Hoc Committee reviewed the Joint Powers Agreement with MBASIA's attorney and sent a draft amendment to each Member's representative on December 30, 2014 requesting feedback. No suggested changes were made, and MBASIA's Board of Directors voted to approve the proposed changes on February 2, 2015. (**"EXHIBIT A"**). Our City Attorney has reviewed the proposed new contract and notes that on page 8 under Article 14 Coverage Programs section (b) while public officials errors and omissions are covered, public officials personal liability coverage is eliminated.

While most changes are clean up in nature, the following changes are also noted:

1. Page 8 Article 14 section (d) – If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the covered amount is the responsibility of the member.
2. Page 11 Article 21 section (b) – The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.
3. Page 12 Article 22 – If a Member or Former Member withdraws or is involuntarily terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets.

In order to approve the changes to the JPA Agreement, the Agreement requires approval by the City Council. As soon as the amendment is authorized by two-thirds of the member agencies, the amendment will be binding for all members.

REVIEWED/CONCUR:



Electronic Signature

Layne P. Long
City Manager
City of Marina

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
RELATING TO THE
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (the 'Agreement) is made and entered into by and among the public agencies (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

RECITALS

WHEREAS, California Government Code Section 6500 *et seq.* (the "Act") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified in Government Code Section 990.4; and

WHEREAS, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for Members of the Monterey Bay Area Self-Insurance Authority, formerly known as the Monterey Bay Area Self-Insurance Fund ("Authority"); and

WHEREAS, the Members have previously executed that certain Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund, which the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

~~**WHEREAS**, the City of Seaside, one of the member public entities of the Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund has complied with all previous terms and provisions of the then existing agreement and has withdrawn its membership in that Joint Powers Agreement;~~

NOW, THEREFORE, the cities of Capitola, Gonzales, Greenfield, Hollister, King City, Marina, Scotts Valley, Soledad, Sand City, and Del Rey Oaks, each of them in consideration of the mutual promises and agreements hereinafter stated and the performance thereof, do hereby agree as follows:

Article 1, Definitions, The following definitions shall apply to the provisions of this agreement:

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5 Division 7, Title 1 of the California Government Code, as amended or supplemented.

"Assessment" means an amount in addition to the Member's or Former Member's Contribution which the Board of Directors determines in accordance herewith and/or that a Member or Former Member owes on account of its participation in, or the financing of, a program for a given Program year.

"Authority" shall mean the Monterey Bay Area Self-insurance Authority initially created by the original Joint Powers Agreement Relating to the Monterey Bay area Self-Insurance Fund.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

"Bonds" shall mean bonds, notes or other obligations issued or incurred by the Authority in order to finance or refinance any program of Claims.

"Bylaws" means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

~~"Chief Executive Officer" shall mean that employee or officer of the Authority or of a Member who is so appointed by the Board of Directors.~~

"Claim" shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

"Contribution" means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the program year in exchange for the benefits provided by the Program, including all amounts necessary to pay claims, debt service on Bonds and all other costs or expenses of a Program.

"Director" shall mean the city manager or ~~chief executive officer~~ appointee of a member, or an alternate appointed by a city manager ~~or chief executive officer.~~

"Duly Constituted Board Meeting" shall mean any Board of Directors meeting noticed and held in the required manner and at which a quorum was determined in accordance with the Bylaws to be present at the beginning of the meeting.

"Estimated Contribution" means the amount which the Board of Directors estimates will be the appropriate contribution for a Member's participation in a Program or a Program Year.

~~"Excess Insurance or Re-Insurance" shall mean that insurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-insurance retention maintained by the Authority.~~

"Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.

"Former Member" shall mean a city or other public entity which was a signatory to the Agreement but which has withdrawn from or been involuntarily terminated from participating in the Authority.

"Insurance" shall mean that, primary, excess or reinsurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the

Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-Insurance retention maintained by the Authority.

"Joint Protection Program" means a Program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

"Member" shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

"Program" or "Programs" means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

"Program Administrator" shall mean the employee or contract service firm appointed by the Board of Directors of the Authority to administer the Authority.

"Retained Earnings", as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

Article 2. Purposes. This Agreement is entered into by the Members pursuant to the provisions of California Government Code Section 990, 990A, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers' compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, namely the Monterey Bay Area Self-Insurance Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide; to the extent permitted by law; for the inclusion at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

Article 3. Parties to Agreement. Each party to this Agreement certifies that it intends to, and does contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19, 20 and 21, or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

Article 4. Term of Agreement. This Agreement shall become effective as to existing Members of the Authority as set forth in Article 34 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become

effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 28 of this Agreement.

Article 5. Creation of Authority. Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Monterey Bay Area Self-Insurance Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

Article 6. Powers of Authority.

(a) The Authority shall have all of the powers common to Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including but not limited to, any or all of the following:

(1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;

(2) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;

(3) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;

(4) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;

(5) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities;

(6) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;

(7) to employ agents and employees, and/or to contract for such services;

(8) to incur long term debt, including the issuance of Bonds, notes and liabilities or other obligations to finance the Programs if seventy-five percent (75%) of the Members voting agree, and enter into agreements with respect thereto and to exercise any other powers available to the Authority under Article 2 or Article 4 of the Act;

(9) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;

(10) to sue and be sued in its own name;

(11) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

Article 7. Board of Directors. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be set forth in the Bylaws.

The Board of Directors shall be composed of a Director from each Member that has executed the Agreement and is participating in a Joint Protection Program. Each director on the Board shall have one vote. Each director on the Board shall serve as set forth in the Bylaws.

Article 8. Compliance with the Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

Article 9. Powers of the Board of Directors. The Board of Directors Shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement an the Bylaws, including, but not limited to, the following:

(a) to exercise all powers to conduct all business of the Authority;

(b) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;

(c) to determine and select all insurance, including Excess or Re-Insurance, necessary to carry out the programs of the Authority;

(d) to contract for, develop or provide through its own employees various services for the Authority;

(e) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;

(f) to receive and act upon reports of committees and from the Chief Executive Officer;

(g) to appoint staff, including a ~~Chief Executive Officer~~Program Administrator, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;

(h) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims Involving a Member during their period of membership in and coverage under a Program;

(i) to fix and collect from time to time Contributions and Assessments for participation in the Programs;

(j) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;

(k) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;

(l) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;

(m) to obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds for the Authority;

(n) to establish policies and procedures for the operation of the Authority and the Programs;

(o) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;

(p) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and actions of the Authority;

(q) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;

(r) to transact any other business which is within the powers of the Board of Directors;

(s) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;

(t) to incur indebtedness for the Authority or provide for the issuance of Bonds, and to establish the terms and conditions of such indebtedness;

(u) to provide financial administration, claims management services, legal representations, safety engineering, annual audits, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;

(v) to exercise general supervisory and policy control over the ~~Chief Executive Officer~~ Program Administrator;

(w) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority;

(x) to take such actions as may be necessary to enforce this Agreement against any Member; and

(y) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

Article 10. Committees of the Board. Committees established by the Board shall be standing or special. Each committee shall exercise such power and carry out such functions as are designated by this Agreement or the Bylaws or as delegated to it by the Board or an Executive Committee. Except as otherwise provided by the Board, or these Bylaws, such committees shall be advisory only and subject to the control of the Board or an Executive Committee, Whichever appoints them. Except as may otherwise be provided by the Board, or by these Bylaws, any expenditure of funds by a committee shall require prior approval by the Board.

Article 11. Officers of the Authority. The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the Directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other case, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

Article 12. Extension of Agreement. The provisions of this agreement may be extended to incorporate "pooling" of other forms of insurance, including fire insurance and liability insurance, under such conditions as are stated in an appropriate addendum to this agreement, provided each agency participating herein consents in writing to such increased or additional purpose and power.

Article 13. Provision for Bylaws. The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this agreement. In the event any provision of the Bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

Article 14. Coverage Programs.

(a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors, Such coverage may provide for binding arbitration before an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, ~~public officials personal liability coverage~~ and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of ~~Excess or Re-~~ Insurance. The Authority Shall not be liable to any Member or to any other person or organization if such excess or re-insurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members. If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the recoverable amount covered amount is the responsibility of the member.

Article 15, Accounts and Records,

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as determined by the Board of Directors to be necessary or advisable and as may be required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture, trust agreement, or resolution relating to the issuance of Bonds and providing for the investment of monies held thereunder, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to California Government Code Sections 53601 *at seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The various funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority.

Article 16. Services Provided by the Authority. The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

(c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;

(d) to provide loss prevention and safety consulting services to Members;

(e) to provide claims adjusting and subrogation services for Claims covered by the Programs;

(f) to provide loss analysis and control by the use of statistical analysis, data process, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;

(g) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;

(h) to conduct risk management audits relating to the participation of Members in the Programs; and

(i) to provide such other services as deemed appropriate by the Board of Directors

Article 17. Duties and Responsibilities of Members. Members or Former Members shall have the following duties and responsibilities, ~~w~~hich shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

(a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.

(b) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices and/or hazard mitigation.

(c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors,

(d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 22 or 23 of this Agreement or the Bylaws.

(e) Each Member or Former Member shall provide the Authority with such, other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

Article 18. New Members. The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board, deems appropriate.

Article 19. Voluntary Withdrawal of a Member.

Subject to Article 20, any member may voluntarily withdraw from the Authority if that Member has participated in the Authority for a minimum of three full Program years, and the Member's governing board gives notice to the Board of Directors of the Authority no later than March 1st of the preceding fiscal year of the Member's intent to withdraw from the Authority,

If withdrawal is permitted as set forth above, the Member's participation in the Authority shall terminate at the end of the fiscal year in which notice was given, provided, however, that any Member desiring to leave the Authority shall remain liable for all expenses in excess of Contribution until Claims of the withdrawing Member are settled and obligations to claimants met, the Member formally withdraws from the Authority, and the Member acknowledges that it has no interest in any of the assets of the Authority.

If additional funds are required to settle Claims or obligations of the terminating Member the Board may declare and collect the Assessments or Contributions necessary from the Member. After all Claims and obligations of the terminating Member are met the Board shall determine if any refund of Assessment or Contribution is due and refund such amount.

Article 20. Worker's Compensation Program Financing Requirements

Each Member acknowledges that the Authority intends to issue, during calendar year 2004, Bonds in order to fund reserves that the Authority has determined are currently inadequate for the Claims to be paid by the Authority with respect to its worker's compensation program incurred prior to June 30, 2003, and that the debt service on such Bonds will be payable primarily from a portion of the annual worker's compensation Contributions paid by each Member for the Claims incurred prior to June 30, 2003,

Accordingly, each Member agrees and acknowledges that, so long as any such Bonds are outstanding or any other amounts remain owing with respect thereto, (i) that it will not withdraw from the Authority (and any attempted withdrawal will be null and void), (ii) that it will obtain its worker's compensation insurance coverage solely through the Authority or in connection with the Authority (except for any self-funded retention and any excess worker's compensation coverage), (iii) that a portion of the worker's compensation Assessments and Contributions charged to the Member will be used to pay debt service on such Bonds, or to provide for costs, expenses, reserves or debt service coverage with respect to such Bonds in an amount as may be required by the documents pursuant which such Bonds are issued, (iv) that the amount of Assessments and Contributions which may be due include all amounts necessary to pay debt service and related costs with respect to any Bonds, as set forth in clause (iii) above, including additional amounts which may become due from time to time as the result of a default by another Member of Former Member, (v) that it will pay, as required by the bond or note documentation, all of the Assessments and Contributions due to the Authority, (vi) that the Assessments and Contributions will be payable from any source of available funds of the Member, including amounts on deposit in the general fund of the Member, and (vii) that each Member will take such action as may be necessary to include all Assessments and Contributions due in each of its approved budgets, and to amend such budget if necessary to include any Assessment and Contribution amount not included in its original budget, for so long as it remains, a Member of the Authority and to make the necessary appropriations for all such Assessments and Contributions. Notwithstanding the foregoing, if the documentation relating to the Bonds allows for the early retirement of the Bonds, a Member may withdraw from the Authority and have no liability with respect to any future Assessments or Contributions if it prepays its obligations with respect to such Bonds, as such obligations are set forth in the applicable Bond documentation.

Article 21. Involuntary Termination

~~(a)~~ Notwithstanding the provisions of Article 20 and 21, the Authority Shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority if a Member breaches any duty or responsibility pursuant to Article 17 imposed on Members to this Agreement.

~~(a)(b)~~ The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.

~~(b)(c)~~ Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 19, 20 and 23.

~~(e)(d)~~ Any involuntary termination occurring during any period that Bonds, are outstanding shall be subject to the requirement that the obligations of the Member being terminated with respect to such Bonds, are prepaid, either by such Member or by the Authority.

Article 22. Effect of Withdrawal or Involuntary Termination. The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be

entitled to payment, return or refund of any Contribution, prior Assessment, prior consideration, or other property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph). If a Member or Former Member withdraws or is involuntary terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets.

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member or credits to the Member or Former Member for the period of its participation. Such determination shall not be made until all Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 23(b) of this Agreement. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings applicable to the time of its participation even though such Retained Earnings are declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

Article 23. Termination and Distribution; Assignment.

(a) if no Bonds remain outstanding, this Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all Claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment or Contribution in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment or Contribution shall be determined as set forth by the Board or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with the proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program.

(d) Upon termination of this Agreement all net assets of the Authority shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement.

(e) In lieu of terminating this Agreement, the Board, With the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's

rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

Article 24. Enforcement. The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the non-defaulting party(s) should employ attorneys or incur other expenses for the collection of monies or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party(s).

Article 25. Non-liability of Directors, Officers and Employees. The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

Article 26. Indemnification and Release. Each Member shall and hereby agrees to indemnify and save the Authority and all other Members harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of such Member in the performance of any of its obligations under this Agreement, or any act or negligence of such Member or any of its agents, contractors, servants, employees or licensees with respect to the coverage provided such Member. No indemnification is made under this section or elsewhere in this Agreement by the Authority or its officers, agents, employee successors or assigns.

Article 27. Notices. Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

Article 28. Amendment. This Agreement may be amended at any time by a two-thirds vote of the Members. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

Article 29. Prohibition Against Assignment. No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor,

assignee or third party beneficiary of any Member or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

Article 30. Agreement Complete. The foregoing constitutes the full and executed Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. This Agreement supersedes and replaces all previous agreements..

Article 31. Counterparts. This Agreement may be executed in one or more counterparts and shall be as fully effective as fully effective as though executed in one document.

Article 32. California law. This Agreement shall be governed by the laws of the State of California.

Article 33. Severability. Should any part, term or provision of this Agreement be determined by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Article 34. Effective Date. This Agreement shall become effective as to existing Members of the Authority on the date on which at least two-thirds of such Members have executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials on the date indicated below:

Acknowledgment:

Name, Chair – Board of Directors
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

Date: _____

I hereby certify this amended and Restated Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Joint Powers Agreement.

Name, ~~Chief Executive Officer~~ Program Administrator
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

Date: _____

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
RELATING TO THE
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (the 'Agreement') is made and entered into by and among the public agencies (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

RECITALS

WHEREAS, California Government Code Section 6500 *et seq.* (the "Act") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified in Government Code Section 990.4; and

WHEREAS, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for Members of the Monterey Bay Area Self-Insurance Authority, formerly known as the Monterey Bay Area Self-Insurance Fund ("Authority"); and

WHEREAS, the Members have previously executed that certain Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund, which the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

NOW, THEREFORE, the cities of Capitola, Gonzales, Greenfield, Hollister, King City, Marina, Scotts Valley, Soledad, Sand City, and Del Rey Oaks, each of them in consideration of the mutual promises and agreements hereinafter stated and the performance thereof, do hereby agree as follows:

Article 1, Definitions. The following definitions shall apply to the provisions of this agreement:

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5 Division 7, Title 1 of the California Government Code, as amended or supplemented.

"Assessment" means an amount in addition to the Member's or Former Member's Contribution which the Board of Directors determines in accordance herewith and/or that a Member or Former Member owes on account of its participation in, or the financing of, a program for a given Program year.

"Authority" shall mean the Monterey Bay Area Self-insurance Authority initially created by the original Joint Powers Agreement Relating to the Monterey Bay area Self-Insurance Fund.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

"Bonds" shall mean bonds, notes or other obligations issued or incurred by the Authority in order to finance or refinance any program of Claims.

"Bylaws" means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

"Claim" shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

"Contribution" means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the program year in exchange for the benefits provided by the Program, including all amounts necessary to pay claims, debt service on Bonds and all other costs or expenses of a Program.

"Director" shall mean the city manager, city administrator or appointee of a member, or an alternate appointed by a city manager.

"Duly Constituted Board Meeting" shall mean any Board of Directors meeting noticed and held in the required manner and at which a quorum was determined in accordance with the Bylaws to be present at the beginning of the meeting.

"Estimated Contribution" means the amount which the Board of Directors estimates will be the appropriate contribution for a Member's participation in a Program or a Program Year.

"Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.

"Former Member" shall mean a city or other public entity which was a signatory to the Agreement but which has withdrawn from or been involuntarily terminated from participating in the Authority.

"Insurance" shall mean that, primary, excess or reinsurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-Insurance retention maintained by the Authority.

"Joint Protection Program" means a program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

"Member" shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

"Program" or "Programs" means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

"Program Administrator" shall mean the employee or contract service firm appointed by the Board of Directors of the Authority to administer the Authority.

"Retained Earnings", as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

Article 2. Purposes. This Agreement is entered into by the Members pursuant to the provisions of California Government Code Section 990, 990A, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers' compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, namely the Monterey Bay Area Self-Insurance Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide; to the extent permitted by law; for the inclusion at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

Article 3. Parties to Agreement. Each party to this Agreement certifies that it intends to, and does contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19, 20 and 21, or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

Article 4. Term of Agreement. This Agreement shall become effective as to existing Members of the Authority as set forth in Article 34 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 28 of this Agreement.

Article 5. Creation of Authority. Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Monterey Bay Area Self-Insurance Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the

members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

Article 6. Powers of Authority.

(a) The Authority shall have all of the powers common to Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including but not limited to, any or all of the following:

(1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;

(2) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;

(3) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;

(4) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;

(5) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities;

(6) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;

(7) to employ agents and employees, and/or to contract for such services;

(8) to incur long term debt, including the issuance of Bonds, notes and liabilities or other obligations to finance the Programs if seventy-five percent (75%) of the Members voting agree, and enter into agreements with respect thereto and to exercise any other powers available to the Authority under Article 2 or Article 4 of the Act;

(9) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;

(10) to sue and be sued in its own name;

(11) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

Article 7. Board of Directors. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be set forth in the Bylaws.

The Board of Directors shall be composed of a Director from each Member that has executed the Agreement and is participating in a Joint Protection Program. Each director on the Board shall have one vote. Each director on the Board shall serve as set forth in the Bylaws.

Article 8. Compliance with the Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

Article 9. Powers of the Board of Directors. The Board of Directors Shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to, the following:

- (a) to exercise all powers to conduct all business of the Authority;
- (b) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;
- (c) to determine and select all insurance, including Excess or Re-Insurance, necessary to carry out the programs of the Authority;
- (d) to contract for, develop or provide through its own employees various services for the Authority;
- (e) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;
- (f) to receive and act upon reports of committees and from the Chief Executive Officer;
- (g) to appoint staff, including a Program Administrator, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;
- (h) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims Involving a Member during their period of membership in and coverage under a Program;
- (i) to fix and collect from time to time Contributions and Assessments for participation in the Programs;
- (j) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;

(k) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;

(l) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;

(m) to obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds for the Authority;

(n) to establish policies and procedures for the operation of the Authority and the Programs;

(o) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;

(p) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and actions of the Authority;

(q) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;

(r) to transact any other business which is within the powers of the Board of Directors;

(s) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;

(t) to incur indebtedness for the Authority or provide for the issuance of Bonds, and to establish the terms and conditions of such indebtedness;

(u) to provide financial administration, claims management services, legal representations, safety engineering, annual audits, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;

(v) to exercise general supervisory and policy control over the Program Administrator;

(w) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority;

(x) to take such actions as may be necessary to enforce this Agreement against any Member; and

(y) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

Article 10. Committees of the Board. Committees established by the Board shall be standing or special. Each committee shall exercise such power and carry out such

functions as are designated by this Agreement or the Bylaws or as delegated to it by the Board or an Executive Committee. Except as otherwise provided by the Board, or these Bylaws, such committees shall be advisory only and subject to the control of the Board or an Executive Committee, Whichever appoints them. Except as may otherwise be provided by the Board, or by these Bylaws, any expenditure of funds by a committee shall require prior approval by the Board.

Article 11. Officers of the Authority. The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the Directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other case, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

Article 12. Extension of Agreement. The provisions of this agreement may be extended to incorporate "pooling" of other forms of insurance, including fire insurance and liability insurance, under such conditions as are stated in an appropriate addendum to this agreement, provided each agency participating herein consents in writing to such increased or additional purpose and power.

Article 13. Provision for Bylaws. The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this agreement. In the event any provision of the Bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

Article 14. Coverage Programs.

(a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors, Such coverage may provide for binding arbitration before an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of Insurance. The Authority Shall not be liable to any Member or to any other person or organization if such excess or re-insurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members. If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the covered amount is the responsibility of the member.

Article 15, Accounts and Records,

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as determined by the Board of Directors to be necessary or advisable and as may be required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture, trust agreement, or resolution relating to the issuance of Bonds and providing for the investment of monies held thereunder, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to California Government Code Sections 53601 *at seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The various funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority.

Article 16. Services Provided by the Authority. The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

- (c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;
- (d) to provide loss prevention and safety consulting services to Members;
- (e) to provide claims adjusting and subrogation services for Claims covered by the Programs;
- (f) to provide loss analysis and control by the use of statistical analysis, data process, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- (g) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;
- (h) to conduct risk management audits relating to the participation of Members in the Programs; and
- (i) to provide such other services as deemed appropriate by the Board of Directors

Article 17. Duties and Responsibilities of Members. Members or Former Members shall have the following duties and responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

- (a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.
- (b) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices and/or hazard mitigation.
- (c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors,
- (d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 22 or 23 of this Agreement or the Bylaws.
- (e) Each Member or Former Member shall provide the Authority with such, other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

Article 18. New Members. The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board, deems appropriate.

Article 19. Voluntary Withdrawal of a Member.

Subject to Article 20, any member may voluntarily withdraw from the Authority if that Member has participated in the Authority for a minimum of three full Program years, and the Member's governing board gives notice to the Board of Directors of the Authority no later than March 1st of the preceding fiscal year of the Member's intent to withdraw from the Authority,

If withdrawal is permitted as set forth above, the Member's participation in the Authority shall terminate at the end of the fiscal year in which notice was given, provided, however, that any Member desiring to leave the Authority shall remain liable for all expenses in excess of Contribution until Claims of the withdrawing Member are settled and obligations to claimants met, the Member formally withdraws from the Authority, and the Member acknowledges that it has no interest in any of the assets of the Authority.

If additional funds are required to settle Claims or obligations of the terminating Member the Board may declare and collect the Assessments or Contributions necessary from the Member. After all Claims and obligations of the terminating Member are met the Board shall determine if any refund of Assessment or Contribution is due and refund such amount.

Article 20. Worker's Compensation Program Financing Requirements

Each Member acknowledges that the Authority intends to issue, during calendar year 2004, Bonds in order to fund reserves that the Authority has determined are currently inadequate for the Claims to be paid by the Authority with respect to its worker's compensation program incurred prior to June 30, 2003, and that the debt service on such Bonds will be payable primarily from a portion of the annual worker's compensation Contributions paid by each Member for the Claims incurred prior to June 30, 2003, Accordingly, each Member agrees and acknowledges that, so long as any such Bonds are outstanding or any other amounts remain owing with respect thereto, (i) that it will not withdraw from the Authority (and any attempted withdrawal will be null and void), (ii) that it will obtain its worker's compensation insurance coverage solely through the Authority or in connection with the Authority (except for any self-funded retention and any excess worker's compensation coverage), (iii) that a portion of the worker's compensation Assessments and Contributions charged to the Member will be used to pay debt service on such Bonds, or to provide for costs, expenses, reserves or debt service coverage with respect to such Bonds in an amount as may be required by the documents pursuant which such Bonds are issued, (iv) that the amount of Assessments and Contributions which may be due include all amounts necessary to pay debt service and related costs with respect to any Bonds, as set forth in clause (iii) above, including additional amounts which may become due from time to time as the result of a default by another Member or Former Member, (v) that it will pay, as required

by the bond or note documentation, all of the Assessments and Contributions due to the Authority, (vi) that the Assessments and Contributions will be payable from any source of available funds of the Member, including amounts on deposit in the general fund of the Member, and (vii) that each Member will take such action as may be necessary to include all Assessments and Contributions due in each of its approved budgets, and to amend such budget if necessary to include any Assessment and Contribution amount not included in its original budget, for so long as it remains, a Member of the Authority and to make the necessary appropriations for all such Assessments and Contributions. Notwithstanding the foregoing, if the documentation relating to the Bonds allows for the early retirement of the Bonds, a Member may withdraw from the Authority and have no liability with respect to any future Assessments or Contributions if it prepaes its obligations with respect to such Bonds, as such obligations are set forth in the applicable Bond documentation.

Article 21. Involuntary Termination

(a) Notwithstanding the provisions of Article 20 and 21, the Authority Shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority if a Member breaches any duty or responsibility pursuant to Article 17 imposed on Members to this Agreement.

(b) The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.

(c) Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 19, 20 and 23.

(d) Any involuntary termination occurring during any period that Bonds, are outstanding shall be subject to the requirement that the obligations of the Member being terminated with respect to such Bonds, are prepaid, either by such Member or by the Authority.

Article 22. Effect of Withdrawal or Involuntary Termination. The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be entitled to payment, return or refund of any Contribution, prior Assessment, prior consideration, or other property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph). If a Member or Former Member withdraws or is involuntary terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets from either program.

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member or credits to the Member or Former Member for the period of its participation. Such determination shall not be made until all

Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 23(b) of this Agreement. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings applicable to the time of its participation even though such Retained Earnings are declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

Article 23. Termination and Distribution; Assignment.

(a) if no Bonds remain outstanding, this Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all Claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment or Contribution in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment or Contribution shall be determined as set forth by the Board or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with the proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program.

(d) Upon termination of this Agreement all net assets of the Authority shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement.

(e) In lieu of terminating this Agreement, the Board, With the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

Article 24. Enforcement. The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the non-defaulting party(s) should employ attorneys or incur other expenses for the collection of monies or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party(s).

Article 25. Non-liability of Directors, Officers and Employees. The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

Article 26. Indemnification and Release. Each Member shall and hereby agrees to indemnify and save the Authority and all other Members harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of such Member in the performance of any of its obligations under this Agreement, or any act or negligence of such Member or any of its agents, contractors, servants, employees or licensees with respect to the coverage provided such Member. No indemnification is made under this section or elsewhere in this Agreement by the Authority or its officers, agents, employee successors or assigns.

Article 27. Notices. Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

Article 28. Amendment. This Agreement may be amended at any time by a two-thirds vote of the Members. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

Article 29. Prohibition Against Assignment. No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

Article 30. Agreement Complete. The foregoing constitutes the full and executed Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. This Agreement supersedes and replaces all previous agreements..

Article 31. Counterparts. This Agreement may be executed in one or more counterparts and shall be as fully effective as fully effective as though executed in one document.

Article 32. California law. This Agreement shall be governed by the laws of the State of California.

Article 33. Severability. Should any part, term or provision of this Agreement be determined by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Article 34. Effective Date. This Agreement shall become effective as to existing Members of the Authority on the date on which at least two-thirds of such Members have executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials on the date indicated below:

Acknowledgment:

Date: March 4, 2015

Layne Long, City Manager
City of Marina

I hereby certify this amended and Restated Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Joint Powers Agreement.

Date: _____

Michael Simmons, Program Administrator
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

February 24, 2015

Item No. **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 17, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,
APPROVING THE AMENDED JOINT POWERS AGREEMENT,
MONTEREY BAY AREA SELF INSURANCE AUTHORITY;
AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDED
JOINT POWERS AGREEMENT ON BEHALF OF THE CITY SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.**

REQUEST: City Council consider:

1. Adopting Resolution No. 2015-, approving the Amended Joint Powers Agreement with Monterey Bay Area Self Insurance Authority; and
2. Authorize the City Manager to execute the amended Joint Powers Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

The City of Marina is a member of the Monterey Bay Area Self Insurance Authority (MBASIA), which is a Joint Powers Insurance Authority that provides insurance coverage to the City of Marina for Liability and Workers Compensation.

MBASIA recently conducted a Long Range Planning meeting in which the Board of Directors took action to create an Ad Hoc Committee to review the Joint Powers Agreement.

The Ad Hoc Committee reviewed the Joint Powers Agreement with MBASIA's attorney and sent a draft amendment to each Member's representative on December 30, 2014 requesting feedback. No suggested changes were made, and MBASIA's Board of Directors voted to approve the proposed changes on February 2, 2015. ("**EXHIBIT A**"). Our City Attorney has reviewed the proposed new contract and notes that on page 8 under Article 14 Coverage Programs section (b) while public officials errors and omissions are covered, public officials personal liability coverage is eliminated.

While most changes are clean up in nature, the following changes are also noted:

1. Page 8 Article 14 section (d) – If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the covered amount is the responsibility of the member.
2. Page 11 Article 21 section (b) – The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.
3. Page 12 Article 22 – If a Member or Former Member withdraws or is involuntarily terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets.

In order to approve the changes to the JPA Agreement, the Agreement requires approval by the City Council. As soon as the amendment is authorized by two-thirds of the member agencies, the amendment will be binding for all members.

REVIEWED/CONCUR:


Electronic Signature _____
DUANE T. LONG
City Manager
City of Marina